IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

MFA.No. 127 of 2007

(WCC.52/2005 ON THE FILE OF THE COMMISSIONER FOR WORKMENS COMPENSATION, THIRUVANANTHAPURAM)
.....

APPELLANT: 2ND OPPOSITE PARTY

THE NATIONAL INSURANCE CO. LTD.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
MANAGER, MOTOR THIRD PARTY CELL,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: APPLICANTS/1ST OPPOSITE PARY
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1. REKHA.V., W/O LATE SINDHU KUMARAN NAIR,
MUDUMBIL VEEDU, EDAKKODU, PRAVACHAMBALAM,
NEMOM P.O., THIRUVANANTHAPURAM.

2. SINDHOORA R.S.NAIR(MINOR),
D/O LATE SINDHU KUMARAN NAIR, MUDUMBIL VEEDU,
EDAKKODU, PRAVACHAMBALAM, NEMOM P.O.,
THIRUVANANTHAPURAM.
(REPRESENTED BY 1ST RESPONDENT MOTHER REKHA.V)

3. SIDHARTH R.S.(MINOR),
S/O LATE SINDHU KUMARAN NAIR, MUDUMBIL VEEDU,
EDAKKODU, PRAVACHAMBALAM, NEMOM P.O.,
THIRUVANANTHAPURAM.
(REPRESENTED BY 1ST RESPONDENT MOTHER REKHA.V.)

4. SARASAMMA, W/O LATE SREEDHARAN NAIR,
MUDUMBIL VEEDU, EDAKKODU,
PRAVACHAMBALAM, NEMOM P.O.,
THIRUVANANTHAPURAM.

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5. MR.A.ABDUL RASHEED,
MANAGING DIRECTOR,
HEERA CONSTRUCTIONS CO. (PVT)LTD.,
HEERA PARK, M.P.APPAN ROAD,
VAZHUTHACAUD, TRIVANDRUM.

BY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.127 OF 2007

Dated 1st August, 2007

J U D G M E N T

KOSHY, J.

Appeal is filed by the Insurance company against the award of compensation by the Commissioner for Workmen's Compensation. The contentions raised are three in number. First contention is that Rs.4,000/- was taken as the monthly income without any basis. He was a professional driver. Amount of Rs.4,000/- assessed by the Commissioner needs no interference as commercial heavy vehicle driver will get more than Rs.4,000/- a month. In any event, it is a finding of fact and no substantial question of law arises. Second contention is with regard to assessment of loss of earning capacity. Commissioner has assessed the same on the basis of medical certificate. Index factor was fixed considering the undisputed age of the claimant. It is submitted that Commissioner has awarded penalty to be paid by the Insurance company, if the amount is not

paid within the time prescribed. It is well settled law that penalty is not payable by the Insurance company but by the employer as held by the Apex Court in ***Ved Prakash Garg v. Premi Devi and others ((1997) 8 SCC 1).*** But in this case, the amount was paid in time and no penalty is payable.

2. Final question is what is the rate of interest to be paid. It is argued by the learned counsel for the appellant insurance company that commissioner has awarded interest from the date of accident. Based on the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Mubasir Ahmed and another(2007 AIR SCW 1265) it was argued that interest can be awarded only from the date of award and not from the date of accident. In motor accident claims, usually, interest is awarded from the date of application except in special circumstances. Even though there is no special provision in the Motor Vehicles Act regarding grant of interest on the compensation awarded, interest is awarded on the discretion of the Motor Accident Claims Tribunal

depending upon the rate of percentage of interest and other circumstances to set off erosion in money value etc. But, award of interest is statutory in Workmen's Compensation case. Section 4A (3) reads as follows:

> "4A. Compensation to be paid when due and penalty for default:- xx xx
> (3) Where any employer is in default in paying the compensation due, under this Act within one month from the date it fell due, the Commissioner shall --
>
> (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and
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> (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty;
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> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a

> reasonable opportunity to the employer to show cause why it should not be passed.
>
> Explanation: For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the
> Reserve Bank of India Act, 1934 (2 of 1934)."

It has been held by the Hon'ble Apex Court and this Court that liability to pay interest from the date compensation fell due as provided under section 4A (3) (a) is mandatory.

3. When compensation 'fell due' is the main dispute. Section 3 mandates payment of compensation by employer immediately when injury occurrs to a workman in the course of employment arising out of employment. Section 4A (1) also casts liability to pay compensation 'as soon as it falls due' and section 4A (3) casts liability to pay interest if it is not paid within one month from the date compensation amount 'fell due'. It is clear from the statutory provisions that amount of compensation fell due on the date of accident itself. Interest liability can be avoided by making payment/deposit or at least provisional payment/deposit within a month of the accident. If compensation 'falls due' only on the date of award, compensation has to be calculated on the provisions of the

Act existing on the date of award. Now, it is settled law that compensation has to be calculated with reference to the provisions of the Act as on the date of accident as compensation 'fell due' on that date itself. In K.S.E.B. v. Valsala ((1999) 8 SCC 254), a three member Bench of the Supreme Court held that relevant date for determination of the rights and liabilities of the parties concerned is the date of accident and not the date of adjudication of the claim. It is true that if there is dispute regarding liability, matter can be referred to the commissioner. But, Constitution Bench of the Hon'ble Apex Court in Pratap Narain Singh Deo v. Shrinivas Sabata and another (AIR 1976 SC 222 = ((1976) 1 SCC 289) held that even a reference under section 19 of the Act does not have the effect of suspending the liability of an employer to pay compensation under section 3 till after adjudication or settlement. It is the duty of the employer to pay/deposit compensation as soon as personal injury is caused to the workman in an accident during the course of employment. If the employer fails to do so within one month of the accident and also makes no provisional payment, he is liable to pay interest from the date of accident. Apex Court held as follows:

"7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under section 3, in respect of the injury, was suspended until after the settlement contemplated by section

> 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary."

Apex Court at paragraph 8 it was observed as follows:

> "8. It was the duty of the appellant, under section 4-A (1) of the Act to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner....."

For the last three decades, this court was following the above decision and interest was being awarded from the

date of accident treating the date of accident as the date when 'compensation fell due'. Various High Courts were also following the above dictum. (See: Gopinath v. United India Insurance Co. Ltd. - 2000 II LLJ 80 Ker. DB; Vagher Mamad Husein Gadh v. Secretary, Gujarat Electricity Board (1996 Lab. IC 368 and Divisional Manager, New India Assurance Co. Ltd. v. S.B. Singh - 2003 Lab. I.C. 596 Orissa). Apex Court also in large number of cases, held that interest is payable from the date of accident on the basis of statutory mandate. In Ved Prakash Garg v. Premi Devi and others ((1997) 8 SCC 1), it was held that imposition of penalty is different from liability to pay interest from the date compensation fell due. Hon'ble Apex Court observed as follows at paragraph 9 page 11:

> "..... Thus even in the scheme of unamended section 4-A (3) or as per the amended Section 4-A (3) read with clauses (a) and (b) thereof, it becomes clear that additional amount of compensation can be levied against the defaulting employer by way of penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant. Interest payable on the principal amount, if not paid when it fell due, is not considered by the legislature to be a penalty.

> This is further highlighted by the proviso to section 4-A (3) as substituted by Act 30 of 1995 which clearly indicates that a penalty amount under clause (b) cannot be imposed against the employer without giving him reasonable opportunity to show cause. No such show cause notice is contemplated while imposing interest on default of payment of the principal amount on the part of the employer as per section 4-A (3) (a). Absence of this provision is obviously based on the legislative intent that interest on principal amount is not by way of penalty. Therefore, the employer need not be heard in this connection. A simpliciter default in payment of compensation within the time of one month from the date it fell due would automatically attract the provision for simple interest under section 4-A (3) as per the rate prescribed therein and for such imposition of interest no question of justification for the delay is countenanced by the legislature." (underlining done for emphasis)

In that case, Apex Court affirmed the liability to pay interest by the insurance company from the date of accident, but, direction to pay penalty by insurance company was set aside. No contention was raised by the insurance company in this case that there is specific exclusion of liability to pay interest by the insurance

policy. A three member Bench decision in Maghar Singh v. Jashwant Singh((1998) 9 SCC 134 = 1997 ACJ 517) which is relied on in National Insurance Company v. Mubasir Ahamed (2007 AIR SCW 1265), Hon'ble Supreme Court directed to pay interest from the date of accident. In Maghar Singh's case accident occurred on 26.7.1984. Application filed by the workman was rejected by the commissioner and High Court. Apex Court held that workman was entitled to compensation at the rate applicable on the date of accident. But, when Supreme Court allowed the claim, the Act was amended and rate of interest payable was enhanced from 6% to 12% in 1995 by Act No.30 of 1995. Hon'ble Apex Court by using constitutional power, in the interest of justice, considering the long delay, reduced the interest from 12% to 9%, but, directed the employer to pay interest from 26.7.1984 till payment. Apex Court observed as follows:

> "6. The accident occurred way back in 1984 and, therefore,we must decide the rate of interest keeping that factor in mind. We think that it would be appropriate to grant interest at the rate of 9% per annum.
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> 7. In the result, we allow this appeal, set aside the orders of the courts below and hold that the appellant is entitled to compensation of Rs.24,000 with interest at the

> rate of 9% per annum from the date of accident, i.e., 26.7.1984 till the date of recovery or actual payment."

In Mubasir Ahamed's case, Maghar Singh's case was relied, but, directed to pay interest from the date of award only on the basis of the facts of that case. Wide powers vested in the Hon'ble Supreme Court under article 142 of the Constitution of India are not available to the tribunal or even to the High Courts while deciding a statutory appeal. (See the observations in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. - AIR 1996 SC 2005). We are bound by statutory provisions and law declared by the Apex Court as mandated by article 141 of the Constitution as held in Suganthi Suresh Kumar v. Jagdheesan ((2002) 2 SCC 420). When there is conflict between the decisions of the Supreme Court, decision of the larger Bench will prevail (See: Mattulal v. Radhe Lal - AIR 1974 SC 1596). In view of the statutory provisions and larger Bench decision, we see no ground to interfere in that part of the order in awarding interest from the date of accident. We also note that

this ground was not raised before the Commissioner or even in the appeal memorandum, but, only raised as an additional ground by filing petition dated 7.6.2007 in the appeal filed in the year 1998. However, we see no ground to interfere in the impugned award and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

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